

# United States Senate

WASHINGTON, DC 20510

December 20, 2013

The Honorable Shaun Donovan  
Secretary  
Department of Housing and Urban  
Development  
451 7th Street, SW  
Washington, DC 20410-0500

The Honorable Edward Demarco  
Acting Director  
Federal Housing Finance Agency  
400 7th Street, SW  
Washington, DC 20024

The Honorable Ben Bernanke  
Chairman  
The Federal Reserve Board of Governors  
20<sup>th</sup> and Constitution Avenue, NW  
Washington, DC 20551

The Honorable Marty Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

The Honorable Thomas Curry  
Comptroller  
Office of the Comptroller of the Currency  
250 E Street, SW, Room 9048  
Washington, DC 20219

The Honorable Mary Jo White  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Ladies and Gentlemen:

We are writing in regard to your recently re-proposed rule to implement the risk retention requirements of Section 941 of the Dodd Frank Act [Credit Risk Retention, RIN 2501-AD53]. The re-proposal would require an asset backed security sponsor to retain at least 5% of any asset issued by that sponsor. Although the re-proposal improves upon your initial rulemaking effort in March 2011, we are concerned that certain provisions remain unworkable and not in keeping with the intention of Section 941.

Section 941 targeted the breakdown of the "originate to distribute" market for subprime mortgages. Today, the implementation of Section 941 seems to have expanded to a one-size-fits-all approach to regulating the securitization markets for diverse asset classes whose performance varied enormously during the financial crisis.

This one-size-fits-all approach is particularly detrimental to the asset class of open market Collateralized Loan Obligations (CLOs). CLOs are an important source of financing for non-investment grade companies in the U.S. Many of these U.S. companies (including emerging growth companies) rely on CLOs for the funds they need to expand operations or invest in new technologies. The CLC structure does not fit squarely within the framework originally contemplated in Section 941. CLOs are organized by investment managers and operate in a

structure akin to mutual funds. They are not capitalized like banks and do not have the resources available to retain a 5% share of the structure as called for in the proposed rule. We are concerned that the application of a 5% risk retention to CLOs would eliminate the incentive to arrange or manage a CLO, and damage this important source of financing for American businesses.

Your August re-proposal attempts to address the application to CLOs by providing alternative forms of CLO risk retention. Specifically, the re-proposal introduces an alternative arranger risk retention option, under which an arranging bank could fulfill the requirements of Section 941 if it held a 5% share of a CLO "tranche." This retained interest would not be permitted to be hedged or sold until repayment, default or bankruptcy -- requiring instead that the arranger hold the interest on its balance sheet. This alternative, unfortunately, does not address the problem at hand and could ultimately result in unsafe and unsound banking practices, completely at cross-purposes with the goals of prudential regulation and Section 941.

Given the potential impact of Section 941 and the impediments it may create, we respectfully request that you continue to explore additional workable options for the CLO asset class described above, including a potential exercise of your exemptive authority under Section 941(e).

Thank you for your consideration and we look forward to your prompt response.

Sincerely,

The block contains two handwritten signatures. On the left is the signature of Mike Crapo, and on the right is the signature of Mark Kirk. Both signatures are written in dark ink and are positioned above horizontal lines.

Senator Mike Crapo

Senator Mark Kirk

The block contains two handwritten signatures. On the left is the signature of Mike Johanns, and on the right is the signature of Pat Toomey. Both signatures are written in dark ink and are positioned above horizontal lines.

Senator Mike Johanns

Senator Pat Toomey

The block contains a single handwritten signature of Jerry Moran, written in dark ink and positioned above a horizontal line.

Senator Jerry Moran